

Richard M. Heimann (State Bar No. 63607)
Kelly M. Dermody (State Bar No. 171716)
Eric B. Fastiff (State Bar No. 182260)
Brendan Glackin (State Bar No. 199643)
Dean Harvey (State Bar No. 250298)
Anne B. Shaver (State Bar No. 255928)
Lisa J. Cisneros (State Bar No. 251473)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

Joseph R. Saveri (State Bar No. 130064)
James Dallal (State Bar No. 277826)
JOSEPH SAVERI LAW FIRM, INC.
505 Montgomery, Suite 625
San Francisco, CA 94111
Telephone: 415. 500.6800
Facsimile: 415. 500.6803

Co-Lead Class Counsel

[Additional counsel listed on signature page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: March 27, 2014
Time: 1:30 p.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

[REDACTED VERSION]

Pursuant to Your Honor's March 10, 2014 Order (Dkt. 728), the parties submit this joint statement for the March 27, 2014 Case Management Conference.

I. The Parties Have Agreed to Proposed Modifications to the Pre-Trial Schedule

The parties have met and conferred on the pre-trial schedule, as set forth in Your Honor's Guidelines For Final Pretrial Conference In Jury Trials ("Standing Order") and the Court's December 18, 2013 Case Management Order (Dkt. 547). The parties agree to the following two modifications, subject to the Court's approval.

First, the deadline to file and serve "any excerpts of deposition testimony or other discovery to be offered at trial, other than solely for impeachment or rebuttal," shall be April 29, 2014, rather than May 13, 2014. *See* Standing Order § D.3. The parties will meet and confer regarding a mutually agreeable format for deposition designations.

Second, the parties' exchange of "all exhibits, summaries, charts, and diagrams to be used at trial other than solely for impeachment or rebuttal" on April 24, 2014 shall not include demonstratives (e.g., documents created by counsel for the parties for purpose of summarizing or presenting evidence). *See* Standing Order §D.1.a.; December 18, 2013 Case Management Order at 2. The parties will exchange demonstratives on the same schedule that they exchange or identify witness-specific exhibits. The parties will meet and confer concerning the schedule for witness-specific disclosures.

II. Order Granting Stipulation Regarding Document Admissibility and Authentication

On May 14, 2013, the Court entered the parties' Stipulation and [Proposed] Order Regarding Document Admissibility and Authentication (Dkt. 420). "Except as provided [in the Stipulated Order], "all documents produced by Plaintiffs or Defendants in this case bearing a bates number are authentic true and correct copies of documents within the possession, custody or control of the producing party, and the metadata and email header information produced by Plaintiffs or Defendants accurately reflects the senders, recipients and/or custodians of email and other documents." *Id.* "Plaintiffs and Defendants reserve the right to challenge the authenticity

1 of specific documents and their associated metadata after another party identifies them for use in
 2 this case.” *Id.*

3 The Stipulated Order requires that the parties will “provide a list of documents that they
 4 request the parties stipulate are business records pursuant to Federal Rule of Evidence 803(6).
 5 For any such documents that any party declines to so stipulate, the producing party will permit
 6 appropriate discovery on the limited issue of whether that specific document meets the business
 7 record requirements of Rule 803(6), without regard to the discovery cutoff date.” (Dkt. 420.)
 8 The parties must “agree to a schedule for the timing of the Plaintiffs’ and Defendants’
 9 identification of documents they intend to use and documents they request producing parties
 10 stipulate are business records, the producing parties’ response, and any related discovery.” *Id.*
 11 “Documents whose authenticity and business records status has been established pursuant to this
 12 stipulation can be introduced into evidence without calling at trial a custodian of the document as
 13 a sponsoring witness.” *Id.* The parties’ stipulation does not affect “any other objections that they
 14 may have to the admissibility of a particular document.” *Id.*

15 Pursuant to the May 14, 2013, Stipulation and Order Regarding Document Admissibility and
 16 Authentication, the parties have met and conferred but do not agree as to a schedule for
 17 compliance with the Stipulated Order. The parties hereby present their respective proposals.

18 **A. Plaintiffs’ Proposed Schedule**

19 The parties will provide a list of documents that they request the parties stipulate are
 20 business records by **April 7, 2014** (the same day for the exchange of exhibit lists (Dkt. 547 at 2).)
 21 The parties shall have until **April 14, 2014** to determine whether they stipulate that the identified
 22 documents are authentic business records. For any documents that the parties do not stipulate are
 23 authentic business records, the producing party will meet and confer with Plaintiffs regarding
 24 discovery by **April 17, 2014**. If any discovery dispute remains outstanding, Plaintiffs and the
 25 producing party will file a joint statement regarding the dispute by noon on **April 18, 2014**.

26 Plaintiffs respectfully submit that the schedule proposed by Defendants, below, will
 27 prejudice Plaintiffs in the event that Defendants do not stipulate to a large number of documents
 28

1 and substantial discovery is therefore needed. Since the documents will be already very familiar
 2 to the parties from the class certification and summary judgment briefing, one week is a
 3 reasonable amount of time for the parties to determine whether they will stipulate to authenticity.
 4 Moreover, it makes no sense to wait until the end of April to meet and confer on a discovery
 5 schedule for any documents that the parties do not so stipulate; rather, discovery should be
 6 underway by then in light of the May 27th trial date.

7 **B. Defendants' Proposed Schedule**

8 The parties will provide a list of documents that they request the parties stipulate are
 9 business records by **April 7, 2014** (the same day for the exchange of exhibit lists (Dkt. 547 at 2).)
 10 The parties shall have until **April 21, 2014** to determine whether they stipulate that the identified
 11 documents are authentic business records. For any documents that the parties do not stipulate are
 12 authentic business records, the producing party will meet and confer with Plaintiffs regarding
 13 discovery by **April 28, 2014**. If any discovery dispute remains outstanding, Plaintiffs and the
 14 producing party will file a joint statement regarding the dispute by noon on **May 2, 2014**.

15 Defendants' proposed schedule—two weeks to determine whether documents are business
 16 records and an additional week to meet and confer—is reasonable in light of the fact that
 17 Defendants have no idea how many documents Plaintiffs intend to submit as part of this process.
 18 If the request includes a voluminous number of documents, it could take over a week to
 19 investigate each one to determine whether it satisfies the requirements of a Federal Rules of
 20 Evidence, Rule 803(6) and is authentic. Defendants' schedule leaves nearly a month for any
 21 necessary discovery.

22 However, if the Plaintiffs feel strongly that this process should be completed by no later
 23 than **April 18, 2014**, the schedule proposed by Defendants should be adopted, with all of the
 24 dates moved earlier in time, that is, with the lists exchanged on **March 24, 2014**, determinations
 25 made as to which documents to stipulate are authentic business records by **April 7, 2014**, a meet
 26 and confer conducted by **April 14, 2014**, and notification to the Court of any matters in dispute
 27
 28

by **April 18, 2014**. Defendants have proposed this schedule to Plaintiffs, but they have declined it, stating that they will not be prepared to share their list until **April 7, 2014**.

III. Status of Mediation

There have been no additional settlements. The parties are continuing to communicate with the mediator (retired U.S. District Judge Layn Phillips) to explore further the possibility of settlement.

IV. Report Regarding Reminder Notice and Opt-Out Process.

Pursuant to the March 10, 2014 Order (Dkt. 728), the Settlement Administrator mailed the reminder notice, in the form ordered by the Court, to the Class on March 13, 2014.

A. Defendants' Statement

Defendants wish to alert the Court to another potential issue with the opt-out and notice process. On March 10, 2014, the Court adopted Plaintiffs' proposal that a reminder notice be sent by March 13 to all class members "who ha[d] not yet submitted claims forms or opted out." (Dkt. 728; Dkt. 727, p. 3.) After Defendants received a complaint from a class member who had earlier opted out of the class that they received a reminder notice advising them to opt-out again, Defendants inquired of the Claims Administrator and have been advised that the Claims Administrator did, in fact, send the reminder notice to all class members who had previously opted out. This failure to follow the Court's direction comes on the heels of the Claims Administrator's failure for approximately three weeks to set up an email account that would permit class members to opt-out via email. Defendants are working with Plaintiffs' counsel to agree on a further notice to class members who have already opted out, advising them that they do not need to take further action in response to the reminder notice.

B. Plaintiffs' Statement

Plaintiffs provided the Claims Administrator with the Court's March 10, 2014 Order immediately after the Court issued it. The Order did not specify which Class members would, or would not, receive a reminder notice. The Claims Administrator sent the reminder notice approved by the Court to Class members by the Court's deadline, including to Class members

1 who had previously opted out. In order to avoid any confusion, Plaintiffs and Defendants have
2 agreed to direct the Settlement Administrator to contact Class members who had previously opted
3 out to inform them that the Settlement Administrator received their requests for exclusion and
4 that they do not need to take further steps to implement their request.

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1 Dated: March 20, 2014

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

2 By: /s/ Kelly M. Dermody
3 Kelly M. Dermody

4 Richard M. Heimann (State Bar No. 63607)
5 Kelly M. Dermody (State Bar No. 171716)
6 Eric B. Fastiff (State Bar No. 182260)
7 Brendan Glackin (State Bar No. 199643)
8 Dean Harvey (State Bar No. 250298)
9 Anne B. Shaver (State Bar No. 255928)
10 Lisa J. Cisneros (State Bar No. 251473)
11 275 Battery Street, 29th Floor
12 San Francisco, California 94111-3339
13 Telephone: 415.956.1000
14 Facsimile: 415.956.1008

15 *Co-Lead Class Counsel*

16 Dated: March 20, 2014

JOSEPH SAVERI LAW FIRM

17 By: /s/ Joseph R. Saveri
18 Joseph R. Saveri

19 Joseph R. Saveri (State Bar No. 130064)
20 James Dallal (State Bar No. 277826)
21 JOSEPH SAVERI LAW FIRM, INC.
22 255 California, Suite 450
23 San Francisco, CA 94111
24 Telephone: 415. 500.6800
25 Facsimile: 415. 500.6803

26 *Co-Lead Class Counsel*

27 Dated: March 20, 2014

O'MELVENY & MYERS LLP

28 By: /s/ Michael F. Tubach
Michael F. Tubach

George Riley
Michael F. Tubach
Christina J. Brown
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
griley@omm.com
mtubach@omm.com
cjbrown@omm.com
Tel.: (415) 984-8700
Fax: (415) 984-8701

Attorneys for Defendant APPLE INC.

1 Dated: March 20, 2014

MUNGER, TOLLES & OLSON LLP

2 By: /s/ Gregory P. Stone
3 Gregory P. Stone

4 Gregory P. Stone
5 Bradley S. Phillips
6 Gregory M. Sergi
7 John P. Mittelbach
8 MUNGER, TOLLES & OLSON LLP
9 355 South Grand Avenue, 35th Floor
10 gregory.stone@mto.com
11 brad.phillips@mto.com
12 gregory.sergi@mto.com
13 john.mittelbach@mto.com
14 Los Angeles, California 90071-1560
15 Telephone: (213) 683-9100
16 Facsimile: (213) 687-3702

17 *Attorneys for Defendant INTEL CORP.*

18 Dated: March 20, 2014

JONES DAY

19 By: /s/ David C. Kiernan
20 David C. Kiernan

21 Robert A. Mittelstaedt
22 David Kiernan
23 Lin W. Kahn
24 JONES DAY
25 555 California Street, 26th Floor
26 San Francisco, CA 94104
27 ramittelstaedt@jonesday.com
28 dkiernan@jonesday.com
linkahn@jonesday.com
Tel.: (415) 626-3939
Fax: (415) 875-5700

Attorneys for Defendant ADOBE SYSTEMS, INC.

1 Dated: March 20, 2014

KEKER & VAN NEST

2 By: /s/ Robert Addy Van Nest
3 Robert Addy Van Nest

4 Robert Addy Van Nest
5 Eugene M. Paige
6 Daniel Purcell
7 Justina Sessions
8 KEKER & VAN NEST
9 633 Battery Street
10 San Francisco, CA 94111-1809
11 rvannest@kvn.com
12 epaige@kvn.com
13 dpurcell@kvn.com
14 jsessions@kvn.com
15 Tel.: (415) 391-5400
16 Fax: (415) 397-7188

17 *Attorneys for Defendant GOOGLE INC.*

18 Dated: March 20, 2014

MAYER BROWN LLP

19 By: /s/ Lee H. Rubin
20 Lee H. Rubin

21 Lee H. Rubin
22 Edward D. Johnson
23 MAYER BROWN LLP
24 Two Palo Alto Square
25 3000 El Camino Real, Suite 300
26 Palo Alto, CA 94306-2112
27 lrubin@mayerbrown.com
28 wjohnson@mayerbrown.com
Tel.: (650) 331-2000
Fax: (650) 331-2060

Kristen A. Rowse
MAYER BROWN LLP
350 South Grand Avenue, 25th Floor
Los Angeles, CA 90071-2112
krowse@mayerbrown.com
Tel.: (213) 229 5137
Fax: (213) 576 8139

Attorneys for Defendant GOOGLE INC.

26 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in
27 the filing of this document has been obtained from all signatories.
28